



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/490,868	01/24/2000	Sam E. Kinney JR.	3660P019DCX	7745

7590 05/05/2006

Lester J. Vincent
Blakely, Sokoloff, Taylor, & Zafman LLP
12400 Wilshire Boulevard, Seventh Floor
Los Angeles, CA 90025

EXAMINER

FELTEN, DANIEL S

ART UNIT	PAPER NUMBER
----------	--------------

3624

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/490,868	Applicant(s) KINNEY ET AL.	
	Examiner Daniel S. Felten	Art Unit 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/06/02 4/21/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-5, 7-14, 16-23 and 25-37 are rejected on the ground of nonstatutory

obviousness-type double patenting as being unpatentable over claims 1-107 of U.S. Patent No.

6216114 Although the conflicting claims are not identical, they are not patentably distinct from each other because Alaia et al ('114) discloses a method and/or system, computer program of conducting on online auction between a plurality of potential bidders (potential sellers and buyer; comprising steps of:

(a) receiving a plurality of bids from bidders/sellers (see column 28, lines 35+; and figs. 3, column 3, lines 34-37 and lines 50+);

(b) ranking/comparing the bids in order of attractiveness (see *current best bid*, fig. 8, column 4, lines 54-62); and

Art Unit: 3624

(c) for each bid, displaying the rank determined in step (see column 4, lines 3-14);

(b) to the bidder who made the bid; (d) transforming the bid into a buyer comparative bid parameter (see Event code, column 4, lines 54-62);

re in claims 2, 11, 20, 29 and 34, a method, system and computer system which determines an ordinal rank for each bid that is displayed to the bidder (see fig. 8, column 4, lines 54-62; column 9, lines 3-11; column 13, lines 54-67; and column 14, lines 41-49);

re claims 3, 12, and 21, comprises the step of ranking the bids in accordance with the price of the bids (see fig. 8, lines 54-62);

re in claim 4, 13 and 22, comprising the step of transforming a bidder comparative bid parameter into a comparative bid parameter for the originator of the auction (see column 3, lines 29-33);

re claim 5, 14, 23 and 35, comprising a step of receiving transformed bid information (see figs, column 8, lines 41-65);

re claim 7, 16 and 25, comprising the additional step of transmitting the rank to the bidder (see figs. Column 4, lines 3-14);

re in claim 8, 17, 26 and 30, comprising the additional steps of repeating steps (b) and (c) as new bids are received (see column 4, lines 3-14);

re claims 9, 18, 27, 32 and 37, comprises the step of displaying a tie rank to the bidder if the ranking in step (b) results in a tie (see fig. 8);

re claims 31 and 36, further comprising means for displaying a tie rank to the seller if a new bid results in a tie rank(see fig. 8)

3. Claims 6, 15 and 24 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 6216114 in view of Togher et al (US 6,014,627). Alaia et al discloses all the limitation of the claims but fails to explicitly disclose, as in claims 6, 15 and 24, the step of receiving a bid price in a base currency, wherein the bid price is originally defined in a local currency of the first bidder. Togher et al teaches a receiving/bidding at a base price in a base currency, wherein the bid price is originally defined in a local currency of the first bidder (col. 6, line 41 to col. 7, line 65). To integrate the feature of foreign currency conversion found in Togher et al into the invention of Alaia et al would have been obvious because an artisan at the time of the invention of Alaia et al would recognize that vendors/sellers/bidders connected over the Internet to the system could be from different countries. Thus such countries would have different currencies, and have sought to use Togher et al's system to convert one currency into another over the Internet.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Felten whose telephone number is (571) 272-6742.

The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DSF
March 08, 2006

Daniel S Felten
Examiner
Art Unit 3624

VINCENT MILLIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

